

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH

Petitioners,

v.

SYMBRAL FOUNDATION, INC.

And RHONDA SEEGOBEN

Respondents

Case No.: I-00-40047

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Code § 6-2701, et seq) and Title 22, Chapter 35, of the District of Columbia Municipal Regulations (“DCMR”). Respondents are the operators of Community Residence Facility (“CRF”) for the mentally retarded. They were charged with eight separate regulatory violations relating to record keeping and environmental and safety conditions within their CRF. Respondents admitted three of the charged infractions¹ and denied five others. An evidentiary hearing on the merits was held on May 4, 2000. Respondent Rhonda Seegoben appeared for herself and for Respondent Symbral Foundation. The Government waived appearance of counsel and appeared through the charging inspector.

¹ The infractions to which Respondent pleaded Admit were numbered as 1, 3, and 5 on the Supplemental Infraction form for NOI 00-40047 and allege violations as follows: A) 22DCMR 3501.5 (window covering requiring repair); B) 22 DCMR 3504.1 (excessive accumulation of dust); and C) 22 DCMR 3513.1(9) (failure to maintain unusual occurrences log). Respondents initially entered a plea of Deny to these three charges, but moved to withdraw that plea at the beginning of the hearing. After Respondents were informed of their rights by the administrative court and that a plea of Admit would be a waiver of those rights with regard to the three infractions at issue, Respondents’ motion was granted and the plea of Admit was accepted.

Upon consideration of the documents received into evidence and the testimony elicited during the hearing, including the direct observation of the witnesses and evaluation of their testimony, the administrative court makes the following findings of fact and conclusions of law.

II. Findings of Fact

1. It is undisputed that Respondent Symbral Foundation operates a Community Residence Facility for the mentally retarded (“facility”) located at 188 Hamilton Street NW, Washington D.C. It is also undisputed that Respondent Rhonda Seegoben is a Qualified Mental Health Professional with direct responsibility for the facility.
2. On or about February 17, 2000, a supervisory inspector from the D.C. Department of Health, Helen Jordan, appeared for an inspection of the facility.
3. The supervisory inspector observed various conditions at the facility that she believed constituted regulatory violations and which are described on the Notice of Deficiencies, admitted into evidence as Petitioner’s Exhibit 1 (“PX-1”).
4. The supervisory inspector observed that the closets in residents’ sleeping area were not in use but that their clothes were neatly placed in the bedrooms.

5. The supervisory inspector requested records for various residents including records for a resident designated in PX-1 as “GJ.” The records were stored in an off-site location approximately 10 minutes from the facility. During the inspection which lasted approximately 2.5 hours, Respondents were unable to produce a complete set of records on GJ because they were not maintained in manner sufficient for the Respondents’ clerical staff to timely locate them, assemble them, and produce them. At the supervisory inspector’s request, the complete records for GJ were produced at a Government office within two weeks of the inspection. The Government acknowledges that the records, once produced, were adequate and complete. It is important to the efficacy and fairness of the Government’s compliance program that records be available for review and evaluation during a CRF inspection.
6. A room adjacent to one of the resident’s bedrooms, called “the sitting room” by staff, was completely unfurnished on the day of the inspection. The room was not closed to resident access and the door between the sitting room and one of the residents’ bedrooms was regularly opened by the resident for window access.
7. There were no towel racks in the residents’ bedrooms. There was only one standard size towel rack of 18 to 24 inches in the residents’ main bathroom. The towel rack was insufficient in size to hold all of the residents’ towels without substantial overlap and therefore the potential for transmission of infection and ineffective drying. Towels were washed daily by the facility staff and/or those

residents who were permitted to use the washing equipment. During the day, towels were draped over chairs and other objects for storage and drying, or were folded and placed on and in contact with various tables and other horizontal surfaces.

III. Conclusions of Law

A. 22 DCMR 3503.6 – “Failure To Have Adequate Closet Space For Residents’ Clothes²”

This charge was dismissed at the close of the Government’s case for failure to meet the burden of production to demonstrate by a preponderance of the evidence that the regulation at issue was violated. The applicable regulation states that:

“Closet space within the bedroom may be considered in calculating square foot minimums for bedrooms, but shall be clearly divided for each resident.” 22 DCMR 3503.1.

In this case, the Government demonstrated only that a closet or closets were not in use. Where a closet is not used, it is not subject to being divided. Moreover, although the nonuse of closets may be undesirable, such a condition is not a violation of 22 DCMR 3503.1, the infraction that was charged. The facts presented in the Government’s case could not support a violation of the regulation at issue and accordingly, this charge was dismissed.

² The quoted language is written on the Notice of Infraction adjacent to the applicable regulatory citation. It is quoted for clarity of reference within this case and does not necessarily quote the text of the DCMR provision that was charged.

B. 22 DCMR 3512.1 – “Failure To Maintain Current and Accurate Record on a Resident”

Respondents were found liable for this charge. The regulation at issue states as follows:

“Each residence Director shall maintain current and accurate records and reports as required by this section.” 22 DCMR 3512.1.

The administrative court finds that the Government has proven by a preponderance of the evidence that Respondents are liable for this infraction. It is undisputed that Respondents could not produce adequate complete records on GJ during the more than 2.5 hours in which the inspection took place on or about February 17, 2000. Respondent Seegoben admitted during her examination that at least on February 17, 2000, the records at issue were not maintained in a manner sufficient to permit Respondents’ clerical staff to locate them and timely bring them to the facility for review by the inspector. At issue here is the meaning of the term “maintain.” Because the term is not ambiguous in this context, the administrative court’s legal analysis starts and ends with the denotation of this term. *E.g., Chevron v. Natural Resources Defense Council*, 467 U.S. 837, 844 (1984). The dictionary defines “maintain” as “to keep in a condition of good repair and efficiency.” *American Heritage Dictionary* (3rd Ed. 1996) 684. Therefore, because the term “maintain” as applied to files necessarily includes both efficient upkeep and organization, the administrative court concludes that the failure to locate and produce the required records over a generous period of 2.5 hours is sufficient in this context to constitute a

violation of regulation 22 DCMR 3512.1.³ Respondents are therefore liable for this infraction which requires that all files be maintained.

C. 22 DCMR 3514.1 – “Failure to Retain Permanent Record Upon Discharge”

Respondents were found not liable for this charge. The applicable regulation states:

“Each GHRMP or licensee shall retain a permanent record for each resident for at least five years after the resident's discharge or death” 22 DCMR 3514.1.

This regulation, unlike 22 DCMR 3512.1, requires that files be “retained,” but does not require that they be “maintained.” Because it is undisputed that resident GJ’s file was eventually produced in its entirety (although not at the time of the inspection), there can be no doubt that the file was in fact “retained,” (which is to say held) by Respondents. Based on these facts, the Government did not prove by a preponderance of the evidence, that Respondents violated 22 DCMR 3514.1. Accordingly, Respondents are not liable for this infraction.

D. 22 DCMR 3501.1 – “Sitting Room for Residents Did Not Have Chairs”

Respondents were found liable for this charge. This infraction stems from Respondents’ decision to maintain a room without furniture adjoining a resident’s room. The relevant regulation states:

³ It should be noted, however, that the conduct and conditions at issue would likely have been covered by 22 DCMR 3512.2, a regulation that specifically requires that records “*be available at all times for inspection and review.*”

“...[E]ach GHMRP shall provide a home-like atmosphere in a setting that is the least restrictive of the residents’ rights, but yet will allow the resident to function safely and effectively.” 22 DCMR 3501.1.

The Government asserts that the presence of an unfurnished room is inconsistent with the requirement of a “home-like atmosphere” mandated by the applicable regulation. Although this is a highly fact specific issue, the administrative court concludes that in this instance the Government has proven by a preponderance of the evidence that the unfurnished room was a violation 22 DCMR 3501.1 and its “home-like atmosphere” requirement. To be sure, people do sometimes have unfurnished rooms in homes of the kind apparently contemplated by this regulation. The empty room is unacceptable in this case because the testimony offered by Respondents’ witness demonstrated that the room was regularly in use by at least one resident for window access. In a typical home an empty room would reasonably be expected to be closed off from use and certainly would not be in regular use as was the case here. The testimony in this case is that one of the resident’s bedrooms adjoined the empty room and that the resident regularly opened and used the door into that room for window access. Such a condition cannot reasonably be viewed as “home-like.” Accordingly, Respondents are found liable for this infraction.

E. 22 DCMR 3501.1 – “No Towel Racks for Residents in Bedrooms and Bathrooms”

Respondents were found liable for this charge. As in the previous section, this infraction also stems from a condition that the Government claims was not home-like.⁴

The Government asserts that the failure to maintain adequate towel racks constitutes failure to maintain a “home-like” condition as required by 22 DCMR 3501.1. It is undisputed that the residents had access to only a single towel rack of 18 to 24 inches in the main bathroom. Respondents’ witness also testified that due to the lack of sufficient towel rack space, towels were sometimes draped on furniture to dry. This is clearly not a home-like condition. Respondents’ testified that this violation has since been corrected.

IV. Final Order

Therefore, based on the hearing held on the merits, the pleas entered by the Respondents, the testimony and exhibits presented and admitted into evidence, and the entire record in this matter, it is this _____ day of _____, 2000, it is hereby:

⁴ The regulation at issue, 22 DCMR 3501.1, is quoted in the preceding section of this Order.

ORDERED, that Respondents are **liable** for the following infractions:

<u>Infraction</u>	<u>Fine</u>
22 DCMR 3501.5	\$100.00
22 DCMR 3504.1	\$100.00
22 DCMR 3513.1(9)	\$100.00
22 DCMR 3501.1 ⁵	\$100.00
22 DCMR 3501.1 ⁶	\$100.00;

and it is further

ORDERED, that Respondents are **not liable** for the following infractions which shall be dismissed:

22 DCMR 3503.6
22 DCMR 3514.1;

and it is further

ORDERED, that Respondents are jointly and severally liable for and shall cause to be remitted a single payment in the amount of **SIX HUNDRED DOLLARS (\$600.00)**, pursuant to D.C. Code § 6-2713(e) and in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order. (Fifteen (15) calendar days plus five (5) days mailing for service pursuant to D.C. Code § 6-2715). A failure to comply with the attached payment instructions and remit a payment within twenty (20) days will authorize the implementation of additional sanctions, including the suspension of the Respondent's license or permit pursuant to D.C. Code § 6-2713(f).

FILED 05/16/00

Paul Klein
Chief Administrative Law Judge

⁵ The charged infraction is for failure to maintain a home-like environment, specifically, an unfurnished room.

⁶ The charged infraction is for failure to maintain a home-like environment, specifically, inadequate towel racks.